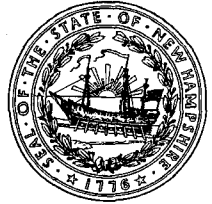


State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

**NHDES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-2147 FAX (603) 271-6588



Vitalij & Aysa Scher  
22 Beecher Place  
Newton Center, MA 02459

**ADMINISTRATIVE ORDER  
No. WD 05-033**

Re: King Arthur Drive, Farmington, NH  
Wetlands Bureau File #2002-1364

December 28, 2005

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Water Division to Vitalij Scher and Aysa Scher pursuant to RSA 482-A:6. This Administrative Order is effective immediately upon issuance.

**B. PARTIES**

1. The Department of Environmental Services, Water Division ("DES"), is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Vitalij & Aysa Scher, are individuals having a mailing address of 22 Beecher Place, Newton Center, MA 02459.

**C. STATEMENTS OF FACTS AND LAW**

1. Pursuant to RSA 482-A, the Department of Environmental Services regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11,I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. RSA 482-A:3, I states that "No person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."
3. Wt 304.06(a) requires jurisdictional wetlands and surface waters to be protected with erosion and siltation control measures throughout construction until all disturbed surfaces are stabilized.
4. Wt 304.07 requires "appropriate slope protection adjacent to culverts such as concrete or stone headwalls or rip-rap where flowing water conditions exist."
5. Vitalij & Aysa Scher are the owners of property located at King Arthur Drive in Farmington, more particularly described in a deed recorded with the Strafford County Registry of Deeds at Book 3012 Page 168, identified on the Farmington Tax Map R06 as Lot 16 ("the Property").
6. On April 26, 2005 DES received a complaint alleging that a culvert directing a stream under King Arthur Drive had been removed and a new culvert had been installed which altered the direction of the flow on the Property.

7. On May 24, 2005 DES received a second complaint from the Farmington Conservation Commission dated April 18, 2005, alleging that a stream had been diverted, a new culvert had been installed, and a wetland had been filled on the Property.

8. On June 21, 2005 DES staff conducted a site inspection on the Property. During the site inspection the following was observed:

- a. A culvert had recently been installed, which extended approximately 20' across King Arthur Drive and continued for approximately 60' across the Property toward the east property boundary;
- b. The culvert directed the flow of two streams on the west side of King Arthur Drive which converge to become a perennial stream on the east side of the Property;
- c. Water was impounded in a wetland on the west side of King Arthur Drive between the outlet of the two streams and the road and the culvert inlet was draining the impounded water;
- d. From the culvert outlet, the perennial stream ran its natural course continuing behind the garage and house on the abutting property, Tax Map R06 Lot 17;
- e. An approximate 60' x 60' section of the Property had been filled with bark mulch, in the location of the previously existing culvert and the pre-existing stream channel;
- f. Approximately 20' x 10' of unstable fill had been placed in a wetland on the west side of King Arthur Drive for installation of the new culvert;
- g. No headwall was constructed at the culvert inlet and no erosion controls had been installed, resulting in sedimentation of the adjacent wetland;
- h. Approximately 10' to the north of the culvert inlet, a 10' x 10' section of unstable fill had been placed alongside the road bank and in the wetland with no erosion controls resulting in deposition of additional material into the wetland;
- i. The culvert outlet on the Property was stabilized with a stone headwall and mulch; and
- j. The culvert outlet was set at a higher grade than the stream that it flowed into.

9. DES has no record of any permits for activities regulated under RSA 482-A on the Property.

10. The Schers have been the subject of previous enforcement action by DES for violations of RSA 482-A on abutting property which they also own (Farmington Tax Map R06, Lot 16). The violations involved failed sediment and erosion controls and deposition of sediment into 265 linear feet of the same perennial stream referenced in this Order.

11. In order to resolve the previous RSA 482-A violations the Schers, at DES's request, installed erosion controls, implemented bank stabilization methods, and removed the sediment from the perennial stream. The Schers however, have failed to provide follow up documentation to show that the previously eroding bank has been permanently stabilized after being requested to do so by DES.

#### D. DETERMINATION OF VIOLATIONS

1. Vitalij & Aysa Scher have violated RSA 482-A:3, I, by removing an existing culvert, no longer than 20', from a perennial stream channel and rerouting the stream through an 80' long culvert in a different location without a permit from DES.
2. Vitalij & Aysa Scher have violated RSA 482-A:3, I, by filling at least 80 linear feet of a perennial stream channel without a permit from DES.
3. Vitalij & Aysa Scher have violated RSA 482-A:3, I, by filling 100 square feet of wetland and by filling 200 square feet of wetland in a second location for the removal and installation of a culvert without a permit from DES.
4. Vitalij & Aysa Scher have violated Wt 304.06(a) by neglecting to install erosion controls around unstable fill resulting in sedimentation into a wetland.

#### E. ORDER

Based on the above findings, DES hereby orders Vitalij & Aysa Scher as follows:

1. **Within 30 days of the date of this Order** submit photographs to DES documenting installation of erosion controls and implementation of stabilization methods to stabilize the fill at the inlet of the newly installed culvert and the fill placed in the wetland on the west side of King Arthur Drive.
2. **Within 30 days of the date of this Order** submit written documentation verifying that a New Hampshire certified wetlands scientist has been retained to carry out E.3 and E.4 below.
3. **Within 60 days of the date of this Order**, submit to DES for review and approval a restoration plan designed and stamped by a NH Certified Wetland Scientist to remove the 80' long culvert, install a culvert in the pre-existing location to its pre-existing length, and to restore the stream channel back to its original path. The plan shall include the following:
  - a. A plan with dimensions, drawn to scale, showing:
    1. Existing conditions, with wetland boundaries and stream channels; and
    2. Proposed conditions after reestablishing the jurisdictional areas.
  - b. A detailed description of the proposed methods of erosion control (silt fence, hay bales, etc.) and stabilization of the restoration area;
  - c. A detailed description of the proposed planting plan for the stabilization and revegetation of the restoration area and control of invasive species such as purple loosestrife (*Lythrum salicaria*) and common reed (*Phragmites australis*);
  - d. A description of the proposed construction sequence and methods for accomplishing restoration and anticipated restoration compliance date.
  - e. The dates of when at least two monitoring progress reports, completed by a certified wetland scientist, will be submitted to DES, documenting the impact area over two successive growing

seasons following completion of the restoration project.

- f. A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project and a plan of action to correct any deficiencies.
4. Retain a NH certified wetland scientist to supervise the implementation of the restoration plan and to submit the restoration progress reports.
5. Implement the restoration plan only after receiving written approval from DES.
6. Implement the restoration plan pursuant to the approved schedule and/or conditions of DES.
7. Refrain from all earth moving and other construction or land-development activities on the Property until restoration of all jurisdictional areas has been completed.
8. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Stacey Herbold, Compliance Specialist  
DES Water Division  
PO Box 95  
Concord, NH 03302-0095  
Fax: (603) 271-6588  
email: sherbold@des.state.nh.us

#### F. APPEAL

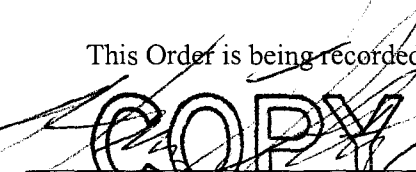
Any person aggrieved by this Order may request DES to reconsider the Order within 20 days of the date of the Order. The request for reconsideration must comply with Wt 203.01(d) (copy attached), and will be processed in accordance with Wt 203.01(e)-(j). Any party not satisfied with the decision on reconsideration may appeal to the Wetlands Council. Please note that under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.

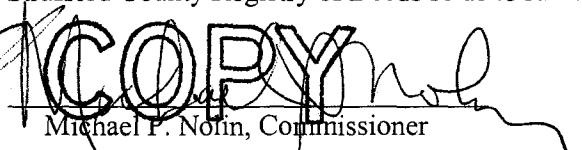
Filing an appeal or motion for reconsideration of the Order does not automatically relieve the Schers of the obligation to comply with the Order.

#### G. OTHER PROVISIONS

Please note that RSA 482-A provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. The Schers remain obligated to comply with all applicable requirements. DES will continue to monitor the Schers' compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Strafford County Registry of Deeds so as to run with the land.

  
Harry T. Stewart, P.E., Director  
Water Division

  
Michael P. Nolin, Commissioner

cc: Gretchen Hamel, Administrator, DES Legal Unit Administrator ✓  
Public Information Officer, DES Public Information Center  
Jennifer Patterson, Senior Asst. Attorney General, EPB, NHDOJ  
Strafford County Registry of Deeds  
Farmington Selectmen  
Farmington Conservation Commission  
File # 2002-01364